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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/957,471	09/21/2001	Kimihiko Nishioka	P 283651 OL97501N-US	4064

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EXAMINER

LESTER, EVELYN A

ART UNIT PAPER NUMBER

2873

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/957,471

Applicant(s)

NISHIOKA ET AL.

Examiner

Evelyn A. Lester

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18, 20-22, 24-37 and 40 is/are pending in the application.
- 4a) Of the above claim(s) 1-4, 7-18, 20 and 27-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5, 6, 21, 22 and 24-26 is/are rejected.
- 7) ☒ Claim(s) 40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Objections***

3. Claim 40 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

### ***Status of the Claims***

4. Claims 1-4, 7-18, 20 and 27-37 are withdrawn as being directed to a non-elected invention. Claims 19, 23, 38 and 39 have been cancelled by the Applicants. Claim 40 is withdrawn as being an improper multiple dependent claim. Claims 5, 6, 21, 22 and 24-26, are pending and have been examined hereby.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 5, 6, 21, 22, 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Hamada et al (U.S. Patent 4,989,958).

Hamada et al discloses the claimed invention of a variable-focus optical unit and an imaging system, basically incorporating the variable-focus optical unit, as noted in Figure 1 and its accompanying text.

As noted Hamada et al's invention has a variable-focus optical element (7) with a fluid portion (i.e. water-aceton mixture solution), and an electrode (8 and/or 9) adjacent to the fluid portion. Their invention further has a power source and a driving circuit (11), which drive the variable-focus optical element. Hamada et al's power source or driving circuit includes a "booster member" (4) that generates or applies a voltage necessary in the driving circuit (please note in Hamada et al at, for example, col. 4, line 50 to col. 5, line 2). Hamada et al's invention variable-focus optical element is capable of achieving optical deflection through its operation.

With respect to claim 6, Hamada et al's invention utilizes electrostatic force for driving the variable-focus optical element.

With respect to claim 21, Hamada et al meets the additional limitation of having a deformable surface (please note for example Figs. 3A and 3B, and their accompanying text, as well as for example the Abstract). Hamada et al's invention is a varifocal lens, therefore claim 22 is well met.

With respect to claim 24, Hamada et al's invention has an image pick-up device, such as a CCD (3).

With respect to claims 25 and 26, as noted above, Hamada et al's invention has a variable-focus optical element (7), a computing unit (5) and an image pick-up device (3). Their invention further has a power source and a driving circuit, or a control system (11), which drive the variable-focus optical element. Hamada et al's power source or driving circuit, or control system, includes a "booster member" (4) that generates a voltage necessary in the driving circuit (please note in Hamada et al at, for example, col. 4, line 50 to col. 5, line 2). Hamada et al's computing unit examines a high-frequency component of each image picked up while being defocused, and the position where the high-frequency component reaches a maximum is determined to be an in-focus position (please note col. 4, line 22 to col. 5, line 25).

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 5, 6, 21, 22 and 24-26 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evelyn A. Lester whose telephone number is (571) 272-2332. The examiner can normally be reached on M-F, subject to an increased flex schedule..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky L. Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2873

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Evelyn A. Lester  
Primary Examiner  
Art Unit 2873